

paid based on 100 percent of the Federal prospective rate at the start of any of its cost reporting periods during the 5-year transition period specified in paragraph (a) of this section.

(2) *Notification requirement to make election.* (i) The request by the long-term care hospital to make the election under paragraph (c)(1) of this section must be made in writing to the Medicare fiscal intermediary.

(ii) For cost reporting periods that begin on or after October 1, 2002 through November 30, 2002, the fiscal intermediary must receive the notification of the election before November 1, 2002.

(iii) For cost reporting periods that begin on or after December 1, 2002 through September 30, 2006, the fiscal intermediary must receive the notification of the election on or before the 30th day before the applicable cost reporting period begins.

(iv) The fiscal intermediary must receive the notification by the dates specified in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section, regardless of any postmarks or anticipated delivery dates. Requests received, postmarked, or delivered by other means after the dates specified in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section will not be accepted. If the date specified in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section falls on a day that the postal service or other delivery sources are not open for business, the long-term care hospital is responsible for allowing sufficient time for the delivery of the notification before the deadline.

(v) If a long-term care hospital's notification is not received by the dates specified in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section, payment will be based on the transition period rates specified in paragraphs (a)(1) through (a)(5) of this section.

(d) *Payments to new long-term care hospitals.* A new long-term care hospital, as defined in §412.23(e)(4), will be paid based on 100 percent of the standard Federal rate, as described in §412.523, with no transition payments, as described in §412.533(a)(1) through (a)(5).

**§412.534 Special payment provisions for long-term care hospitals within hospitals and satellites of long-term care hospitals.**

(a) *Scope.* Except as provided in paragraph (h), the policies set forth in this section apply to discharges occurring in cost reporting periods beginning on or after October 1, 2004 from long-term care hospitals as described in §412.23(e)(2)(i) meeting the criteria in §412.22(e)(2), or satellite facilities of long-term care hospitals that meet the criteria in §412.22(h).

(b) *Patients admitted from hospitals not located in the same building or on the same campus as the long-term care hospital or long-term care hospital satellite—*

(1) *For cost reporting periods beginning on or after October 1, 2004 and before July 1, 2007.* Payments to the long-term care hospital as described in §412.23(e)(2)(i) meeting the criteria in §412.22(e)(2) for patients admitted to the long-term care hospital or to a long-term care hospital satellite facility as described in §412.23(e)(2)(i) that meets the criteria of §412.22(h) from another hospital that is not the co-located hospital are made under the rules in this subpart with no adjustment under this section.

(2) *For cost reporting periods beginning on or after July 1, 2007.* For cost reporting periods beginning on or after July 1, 2007, payments to one of the following long-term care hospitals or long-term care hospital satellites are subject to the provisions of §412.536 of this subpart:

(i) A long-term care hospital as described in §412.23(e)(2)(i) of this part that meets the criteria of §412.22(e) of this part.

(ii) Except as provided in paragraph (h) of this section, a long-term care hospital as described in §412.23(e)(2)(i) of this part that meets the criteria of §412.22(f) of this part.

(iii) A long-term care hospital satellite facility as described in §412.23(e)(2)(i) of this part that meets the criteria in §412.22(h) or §412.22(h)(3)(i) of this part.

(c) *Patients admitted from the hospital located in the same building or on the same campus as the long-term care hospital or satellite facility.* Except for a long-term care hospital or a long-term

care hospital satellite facility that meets the requirements of paragraphs (d) or (e) of this section, payments to the long-term care hospital for patients admitted to it or to its long-term care hospital satellite facility from the co-located hospital are made under either of the following:

(1) *For cost reporting periods beginning on or after October 1, 2004 and before October 1, 2007 and for cost reporting periods beginning on or after October 1, 2012.* (i) Except as provided in paragraphs (g) and (h) of this section, for any cost reporting period beginning on or after October 1, 2004 and before October 1, 2007 and for cost reporting periods beginning on or after October 1, 2012 in which the long-term care hospital or its satellite facility has a discharged Medicare inpatient population of whom no more than 25 percent were admitted to the hospital or its satellite facility from the co-located hospital, payments are made under the rules at §§ 412.500 through 412.541 in this subpart with no adjustment under this section.

(ii) Except as provided in paragraph (g) or (h) of this section, for any cost reporting period beginning on or after October 1, 2004 and before October 1, 2007 and for cost reporting periods beginning on or after October 1, 2012 in which the long-term care hospital or satellite facility has a discharged Medicare inpatient population of whom more than 25 percent were admitted to the hospital or satellite facility from the co-located hospital, payments for the patients who are admitted from the co-located hospital and who cause the long-term care hospital or satellite facility to exceed the 25 percent threshold for discharged patients who have been admitted from the co-located hospital are the lesser of the amount otherwise payable under this subpart or the amount payable under this subpart that is equivalent, as set forth in paragraph (f) of this section, to the amount that would be determined under the rules at § 412.1(a). Payments for the remainder of the long-term care hospital's or satellite facility's patients are made under the rules in this subpart at §§ 412.500 through 412.541 with no adjustment under this section.

(iii) In determining the percentage of patients admitted to the long-term

care hospital or its satellite from the co-located hospital under paragraphs (c)(1)(i) and (c)(1)(ii) of this section, patients on whose behalf an outlier payment was made to the co-located hospital are not counted towards the 25 percent threshold.

(2) *For cost reporting periods beginning on or after October 1, 2007 and before October 1, 2012.* (i) Except for a long-term care hospital or a long-term care hospital satellite facility subject to paragraph (g) or (h) of this section, payments are determined using the methodology specified in paragraph (c)(1) of this section.

(ii) Payments for a long-term care hospital or long-term care hospital satellite facility subject to paragraph (g) of this section are determined using the methodology specified in paragraph (c)(1) of this section except that 25 percent is substituted with 50 percent.

(3) *For cost reporting periods beginning on or after July 1, 2007 and before July 1, 2012.* Payments for a long-term care hospital satellite facility described in § 412.22(h)(3)(i) are determined using the methodology specified in paragraph (c)(1) of this section except that 25 percent is substituted with 50 percent.

(d) *Special treatment of rural hospitals—*(1) *For cost reporting periods beginning on or after October 1, 2004 and before October 1, 2007 and for cost reporting periods beginning on or after October 1, 2012.* (i) Subject to paragraphs (g) and (h) of this section, in the case of a long-term care hospital or satellite facility that is located in a rural area as defined in § 412.503 and is co-located with another hospital for any cost reporting period beginning on or after October 1, 2004 and before October 1, 2007 and for any cost reporting period beginning on or after October 1, 2012 in which the long-term care hospital or long-term care satellite facility has a discharged Medicare inpatient population of whom more than 50 percent were admitted to the long-term care hospital or satellite facility from the co-located hospital, payments for the patients who are admitted from the co-located hospital and who cause the long-term care hospital or satellite facility to exceed the 50 percent threshold for discharged patients who were admitted from the co-located hospital are the lesser of the

amount otherwise payable under this subpart or the amount payable under this subpart that is equivalent, as set forth in paragraph (f) of this section, to the amount that were otherwise payable under §412.1(a). Payments for the remainder of the long-term care hospital's or long-term care hospital satellite facility's patients are made under the rules in this subpart at §§412.500 through 412.541 with no adjustment under this section.

(ii) In determining the percentage of patients admitted from the co-located hospital under paragraph (d)(1)(i) of this section, patients on whose behalf outlier payment was made at the co-located hospital are not counted toward the 50 percent threshold.

(2) *For cost reporting periods beginning on or after October 1, 2007, and before October 1, 2012.* (i) Except for a long-term care hospital or a long-term care hospital satellite facility subject to paragraph (g) or (h) of this section, payments are determined using the methodology specified in paragraph (d)(1) of this section.

(ii) Payments for long-term care hospitals and long-term care hospital satellite facilities subject to paragraph (g) of this section are determined using the methodology specified in paragraph (d)(1) of this section except that 50 percent is substituted with 75 percent.

(3) *For cost reporting periods beginning on or after July 1, 2007 and before July 1, 2012.* Payments for a long-term care hospital satellite facility described in §412.22(h)(3)(i) are determined using the methodology specified in paragraph (d)(1) of this section except that 50 percent is substituted with 75 percent.

(e) *Special treatment of urban single or MSA-dominant hospitals—*(1) *For cost reporting periods beginning on or after October 1, 2004 and before October 1, 2007 and for cost reporting periods beginning on or after October 1, 2012.* (i) Subject to paragraphs (g) and (h) of this section, in the case of a long-term care hospital or a long-term care hospital satellite facility that is co-located with the only other hospital in the MSA or with a MSA-dominant hospital as defined in paragraph (e)(1)(iv) of this section, for any cost reporting period beginning on or after October 1, 2004, and before October 1, 2007 and for any cost reporting

periods beginning on or after October 1, 2012, in which the long-term care hospital or long-term care hospital satellite facility has a discharged Medicare inpatient population of whom more than the percentage calculated under paragraph (e)(1)(ii) of this section were admitted to the hospital from the co-located hospital, payments for the patients who are admitted from the co-located hospital and who cause the long-term care hospital to exceed the applicable threshold for discharged patients who have been admitted from the co-located hospital are the lesser of the amount otherwise payable under this subpart or the amount under this subpart that is equivalent, as set forth in paragraph (f) of this section, to the amount that otherwise would be determined under §412.1(a). Payments for the remainder of the long-term care hospital's or satellite facility's patients are made under the rules in this subpart with no adjustment under this section.

(ii) For purposes of paragraph (e)(1)(i) of this section, the percentage used is the percentage of total Medicare discharges in the Metropolitan Statistical Area in which the hospital is located that are from the co-located hospital for the cost reporting period for which the adjustment was made, but in no case is less than 25 percent or more than 50 percent.

(iii) In determining the percentage of patients admitted from the co-located hospital under paragraph (e)(1)(i) of this section, patients on whose behalf outlier payment was made at the co-located hospital are not counted toward the applicable threshold.

(iv) For purposes of this paragraph, an "MSA-dominant hospital" is a hospital that has discharged more than 25 percent of the total hospital Medicare discharges in the MSA in which the hospital is located.

(2) *For cost reporting periods beginning on or after October 1, 2007 and before October 1, 2012.* (i) Except for a long-term care hospital or a long-term care hospital satellite facility subject to paragraph (g) or (h) of this section, payments are determined using the methodology specified in paragraph (e)(1) of this section.

(ii) Payments for a long-term care hospital or long-term care hospital satellite facilities subject to paragraph (g) of this section are determined using the methodology specified in paragraph (e)(1) of this section except that the percentage of Medicare discharges that may be admitted from the co-located hospital without being subject to the payment adjustment at paragraph (e)(1) of this section is 75 percent.

(3) *For cost reporting periods beginning on or after July 1, 2007 and before July 1, 2012.* Payments for a long-term care hospital satellite facility described in § 412.22(h)(3)(i), are determined using the methodology specified in paragraph (d)(1) of this section except that the payment adjustment under paragraph (e)(1) of this section is 75 percent.

(f) *Calculation of rates—(1) Calculation of LTCH prospective payment system amount.* CMS calculates an amount payable under subpart O equivalent to an amount that would otherwise be paid under the hospital inpatient prospective payment system based on the sum of the applicable hospital inpatient prospective payment system operating standardized amount and capital Federal rate in effect at the time of the LTCH discharge.

(2) *Operating inpatient prospective payment system standardized amount.* The hospital inpatient prospective payment system operating standardized amount—

(i) Is adjusted for the applicable hospital inpatient prospective payment system DRG weighting factors;

(ii) Is adjusted for different area wage levels based on the geographic classifications set forth at § 412.503 and the applicable hospital inpatient prospective payment system labor-related share, using the applicable hospital inpatient prospective payment system wage index value for non-reclassified hospitals. For LTCHs located in Alaska and Hawaii, this amount is also adjusted by the applicable hospital inpatient prospective payment system cost of living adjustment factors;

(iii) Includes, where applicable, adjustments for indirect medical education costs and the costs of serving a disproportionate share of low-income patients.

(3) *Hospital inpatient prospective payment system capital Federal rate.* The hospital inpatient prospective payment system capital Federal rate—

(i) Is adjusted for the applicable hospital inpatient prospective payment system DRG weighting factors;

(ii) Is adjusted by the applicable geographic adjustment factors, including local cost variation based on the applicable geographic classifications set forth at § 412.503 and the applicable full hospital inpatient prospective payment system wage index value for non-reclassified hospitals, applicable large urban location and cost of living adjustment factors for LTCHs for Alaska and Hawaii, if applicable;

(iii) Includes, where applicable, capital inpatient prospective payment system adjustments for indirect medical education costs and the costs of serving a disproportionate share of low-income patients.

(4) *High cost outlier.* An additional payment for high cost outlier cases is based on the fixed loss amount established for the hospital inpatient prospective payment system.

(g) *Transition period for long-term care hospitals and satellite facilities paid under this subpart.* Except as specified in paragraph (h)(2), in the case of a long-term care hospital or a satellite facility that is paid under the provisions of this subpart on October 1, 2004 or of a hospital that is paid under the provisions of this subpart and whose qualifying period under § 412.23(e) began on or before October 1, 2004, the amount paid is calculated as specified below:

(1) For each discharge during the first cost reporting period beginning on or after October 1, 2004, and before October 1, 2005, the amount paid is the amount payable under this subpart with no adjustment under this section but the hospital may not exceed the percentage of patients admitted from the host during its FY 2004 cost reporting period.

(2) For each discharge during the cost reporting period beginning on or after October 1, 2005, and before October 1, 2006, the percentage that may be admitted from the host with no payment adjustment may not exceed the lesser of the percentage of patients admitted

from the host during its FY 2004 cost reporting period or 75 percent.

(3) For each discharge during the cost reporting period beginning on or after October 1, 2006, and before October 1, 2007, the percentage that may be admitted from the host with no payment adjustment may not exceed the lesser of the percentage of patients admitted from the host during its FY 2004 cost reporting period or 50 percent.

(4) For each discharge during cost reporting periods beginning on or after October 1, 2007, the percentage that may be admitted from the host with no payment adjustment may not exceed 25 percent or the applicable percentage determined under paragraph (d) or (e) of this section.

(h) *Effective date of policies in this section for certain co-located LTCH hospitals and satellites of LTCHs.* The policies set forth in this section apply to Medicare patient discharges that were admitted from a hospital located in the same building or on the same campus as a long-term care hospital described in §412.23(e)(2)(i) that meets the criteria in §412.22(f) and a satellite facility of a long-term care hospital as described under §412.22(h)(3)(i) for discharges occurring in cost reporting periods beginning on or after July 1, 2007.

(1) Except as specified in paragraph (h)(4) of this section, in the case of a long-term care hospital or long-term care hospital satellite facility that is described under this paragraph (h), the thresholds applied at paragraphs (c), (d), and (e) of this section are not less than the following percentages:

(i) For cost reporting periods beginning on or after July 1, 2007 and before July 1, 2008, the lesser of 75 percent of the total number of Medicare discharges that were admitted to the long-term care hospital or long-term care hospital satellite facility from its co-located hospital during the cost reporting period or the percentage of Medicare discharges that had been admitted to the long-term care hospital or satellite from that co-located hospital during the long-term care hospital's or satellite's RY 2005 cost reporting period.

(ii) For cost reporting periods beginning on or after July 1, 2008 and before July 1, 2009, the lesser of 50 percent of

the total number of Medicare discharges that were admitted to the long-term care hospital or the long-term care hospital satellite facility from its co-located hospital or the percentage of Medicare discharges that had been admitted from that co-located hospital during the long-term care hospital's or satellite's RY 2005 cost reporting period.

(iii) For cost reporting periods beginning on or after July 1, 2009, 25 percent of the total number of Medicare discharges that were admitted to the long-term care hospital or satellite from its co-located hospital during the cost reporting period.

(2) In determining the percentage of Medicare discharges admitted from the co-located hospital under this paragraph, patients on whose behalf a Medicare high cost outlier payment was made at the co-located referring hospital are not counted toward this threshold.

(3) Except as specified in paragraph (h)(4) of this section, for cost reporting periods beginning on or after July 1, 2007, payments to long term care hospitals described in §412.23(e)(2)(i) that meet the criteria in §412.22(f) and satellite facilities of long-term care hospitals described at §412.22(h)(3)(i) are subject to the provisions of §412.536 for discharges of Medicare patients who are admitted from a hospital not located in the same building or on the same campus as the LTCH or LTCH satellite facility.

(4) For a long-term care hospital described in §412.23(e)(2)(i) that meets the criteria in §412.22(f), the policies set forth in this paragraph and in §412.536 of this part do not apply for discharges occurring in cost reporting periods beginning on or after July 1, 2007 and before July 1, 2012.

(5) For a long-term care hospital or satellite facility that, as of December 29, 2007, was co-located with an entity that is a provider-based, off-campus location of a subsection (d) hospital which did not provide services payable under section 1886(d) of the Act at the off-campus location, the policies set forth in this paragraph and in §412.536 of this part do not apply for discharges

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occurring in cost reporting periods beginning on or after July 1, 2007 and before July 1, 2012.

[69 FR 49251, Aug. 11, 2004, as amended at 69 FR 78529, Dec. 30, 2004; 71 FR 27900, May 12, 2006; 72 FR 26992, May 11, 2007; 73 FR 26839, May 9, 2008; 73 FR 29709, May 22, 2008; 74 FR 43998, Aug. 27, 2009; 75 FR 50416, Aug. 16, 2010]

#### § 412.535 Publication of the Federal prospective payment rates.

Except as specified in paragraph (b), CMS publishes information pertaining to the long-term care hospital prospective payment system effective for each annual update in the FEDERAL REGISTER.

(a) For the period beginning on or after July 1, 2003 and ending on June 30, 2008, information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before May 1 prior to the start of each long-term care hospital prospective payment system rate year which begins July 1, unless for good cause it is published after May 1, but before June 1.

(b) For the period beginning on July 1, 2008 and ending on September 30, 2009, information of the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before May 1 prior to the start of the long-term care hospital prospective payment system rate year which begins July 1, unless for good cause it is published after May 1, but before June 1.

(c) For the period beginning on or after October 1, 2009, information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before August 1 prior to the start of the Federal fiscal year which begins October 1, unless for good cause it is published after August 1, but before September 1.

(d) Information on the LTC-DRG classification and associated weighting factors is published on or before August 1 prior to the beginning of each Federal fiscal year.

[68 FR 34163, June 6, 2003, as amended at 73 FR 26839, May 9, 2008]

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#### § 412.536 Special payment provisions for long-term care hospitals and satellites of long-term care hospitals that discharged Medicare patients admitted from a hospital not located in the same building or on the same campus as the long-term care hospital or satellite of the long-term care hospital.

(a) *Scope.* (1) Except as specified in paragraph (a)(2) of this section, for cost reporting periods beginning on or after July 1, 2007, the policies set forth in this section apply to discharges from the following:

(i) Long-term care hospitals as described in § 412.23(e)(2)(i) that meet the criteria in § 412.22(e).

(ii) Long-term care hospitals as described in § 412.23(e)(2)(i) and that meet the criteria in § 412.22(f).

(iii) Long-term care hospital satellite facilities as described in § 412.23(e)(2)(i) and that meet the criteria in § 412.22(h).

(iv) Long-term care hospitals as described in § 412.23(e)(5).

(2) For cost reporting periods beginning on or after July 1, 2007 and before July 1, 2012, the policies set forth in this section are not applicable to discharges from:

(i) A long-term care hospital described in § 412.23(e)(5) of this part; or

(ii) A long-term care hospital described in § 412.23(e)(2)(i) of this part and that meet the criteria specified in § 412.22(f) of this part; or

(iii) A long-term care hospital or satellite facility, that as of December 29, 2007, was co-located with an entity that is a provider-based, off-campus location of a subsection (d) hospital which did not provide services payable under section 1886(d) of the Act at the off-campus location.

(b) For cost reporting periods beginning on or after July 1, 2007, payments for discharges of Medicare patients admitted from a hospital not located in the same building or on the same campus as the long-term care hospital or long-term care hospital satellite facility will be made under either paragraph (b)(1) or paragraph (b)(2) of this section.

(1) Except as provided in paragraphs (c), (d) and subject to paragraph (f) of this section, for any cost reporting period beginning on or after July 1, 2007 in which a long-term care hospital or a